

Introduced by Senator Wright

February 14, 2011

An act to amend Sections 46601, 46603, and 48204 of the Education Code, relating to school attendance.

LEGISLATIVE COUNSEL'S DIGEST

SB 268, as introduced, Wright. School attendance: interdistrict attendance.

(1) Existing law authorizes the governing boards of 2 or more school districts to enter into an agreement for the interdistrict attendance of pupils who are residents of the districts. If either district fails to approve the interdistrict attendance of a pupil, or in the case of the failure or refusal of the districts to enter into an agreement, existing law authorizes the person having legal custody of the pupil to appeal to the county board of education in accordance with a prescribed procedure.

This bill would require the county board of education to conduct an impartial hearing within 30 days of the filing of the appeal. The bill would specify the issues to which the county board's review of the decision would be limited. The bill would provide that, after 2 school months have passed, if no decision with respect to a pupil's interdistrict attendance has been made by the 2 governing boards or the county board, the school district of residence would receive the revenue limit and state apportionment funding attributable to that pupil. Because this bill would create new duties for county boards of education, it would constitute a state-mandated local program.

(2) Existing law, among other things, until July 1, 2012, provides that a school district may deem a pupil to have complied with residency requirements for school attendance in a district if at least one parent or

the legal guardian of the pupil is physically employed within the boundaries of that district.

This bill would instead provide that, until July 1, 2013, a school district may deem a pupil to have complied with residency requirements for school attendance in a district if at least one parent or legal guardian of the pupil is physically employed within the boundaries of that district during a majority of the time that the pupil is scheduled to be in school.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 46601 of the Education Code is amended
2 to read:

3 46601. (a) If, within 30 calendar days after the person having
4 legal custody of a pupil has so requested, the governing board of
5 either school district fails to approve interdistrict attendance in the
6 current term, or, in the absence of an agreement between the
7 districts, fails or refuses to enter into an agreement, the district
8 denying the permit, or, in the absence of an agreement, the district
9 of residence, shall advise the person requesting the permit of the
10 right to appeal to the county board of education.

11 ~~If,~~

12 (b) ~~If,~~ within 14 calendar days after the commencement of
13 instruction in a new term in each of the school districts,
14 respectively, when the person having legal custody of a pupil has
15 so requested separately of each district not later than 30 calendar
16 days prior to the commencement of instruction in that term in that
17 district, the governing board of either district fails to approve
18 interdistrict attendance in that term, or, in the absence of an
19 agreement between the districts to permit that attendance, fails or
20 refuses to enter an agreement, the district denying the permit, or,
21 in the absence of an agreement, the district of residence, shall

1 advise the person requesting the permit of the right to appeal to
2 the county board of education.

3 ~~Notifying~~

4 (c) *Notifying* districts shall also, in all instances, advise persons
5 making unsuccessful requests for interdistrict attendance of all of
6 the following:

7 ~~(a)~~

8 (1) The person having legal custody may appeal, within 30
9 calendar days of the failure or refusal to issue a permit, or to enter
10 into an agreement allowing the attendance, to the county board of
11 education having jurisdiction over the district of residence of the
12 parent or legal guardian or person having legal custody. Failure
13 to appeal within the required time is good cause for denial of an
14 appeal. An appeal shall be accepted only upon verification by the
15 county board's designee that appeals within the districts have been
16 exhausted. If new evidence or grounds for the request are
17 introduced, the county board may remand the matter for further
18 consideration by the district or districts. In all other cases, the
19 appeal shall be granted or denied on its merits.

20 ~~(b)(1)~~

21 (2) (A) The county board of education shall, within 30 calendar
22 days after the appeal is filed, *conduct an impartial hearing to*
23 *determine whether the pupil should be permitted to attend in the*
24 *district in which the pupil desires to attend and the applicable*
25 *period of time. In the event that compliance by the county board*
26 *within the time requirement for determining whether the pupil*
27 *should be permitted to attend in the district in which the pupil*
28 *desires to attend is impractical, the county board or the county*
29 *superintendent of schools, for good cause, may extend the time*
30 *period for up to an additional five school days. The county shall*
31 *provide adequate notice to all parties of the date and time of any*
32 *hearing scheduled and of the opportunity to submit written*
33 *statements and documentation and to be heard on the matter*
34 *pursuant to rules and regulations adopted by the county board of*
35 *education in accordance with this chapter.* The county board rules
36 may provide for the granting of continuances upon a showing of
37 good cause. The county board of education shall render a decision
38 within three schooldays of any hearing conducted by the board
39 unless the person who filed the appeal requests a postponement.

40 ~~(2)~~

1 (B) *The review by the county board of education of the decision*
2 *of the district governing board under subparagraph (A) shall be*
3 *limited to the following questions:*

4 (i) *Whether the district acted in accordance with an interdistrict*
5 *attendance agreement, where applicable.*

6 (ii) *Whether the district followed the district's policy on*
7 *interdistrict attendance.*

8 (iii) *Whether the district provided the parent or guardian with*
9 *an opportunity to provide information relevant to the interdistrict*
10 *attendance request.*

11 (iv) *Whether there is relevant and material evidence that was*
12 *not considered by the district.*

13 (C) In a class 1 or class 2 county, the county board rules may
14 provide for any hearing pursuant to this section to be conducted
15 by a hearing officer pursuant to Chapter 14 (commencing with
16 Section 27720) of Part 3 of *Division 2 of Title 3 of the Government*
17 *Code*, or by an impartial administrative panel of three or more
18 certificated persons appointed by the county board of education.
19 Section 27722 of the *Government Code* is applicable to a hearing
20 by any impartial administrative panel and, for purposes of this
21 section, the term “hearing officer” in Section 27722 of the
22 *Government* includes an impartial administrative panel. No member
23 of the impartial administrative panel shall be a member of the
24 county board of education, nor be employed by the school district
25 of residence or the district of desired attendance. The definitions
26 of “class 1 county” and “class 2 county” in subdivision ~~(e)~~ (e) of
27 Section 48919.5 apply to this section. If the hearing officer is not
28 authorized to decide whether the pupil should be permitted to
29 attend in the district in which the pupil desires to attend, the county
30 board of education within 10 days of receiving the recommended
31 decision pursuant to subdivision (b) of Section 27722 of the
32 *Government Code* shall render a decision.

33 ~~(e)~~

34 (3) The county supervisor of attendance, or other designee of
35 the county superintendent of schools, shall investigate to determine
36 whether local remedies in the matter have been exhausted and to
37 provide any additional information deemed useful to the county
38 board in reaching a decision.

39 ~~(d)~~

(4) If the interdistrict attendance involves school districts located in different counties, the county board of education having jurisdiction over the district denying a permit, or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall have jurisdiction for purposes of an appeal. If both districts deny a permit, or refuse or fail to enter into an agreement to allow for the issuance of a permit, the county board having jurisdiction over the district of residence shall have jurisdiction for purposes of an appeal and, upon granting a pupil's appeal, shall seek concurrence in the decision by the county board of the other county which shall provide adequate opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the pupil's appeal shall be denied.

(e)

(5) Students who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or rescissions while expulsion proceedings are pending, or during the term of the expulsion.

SEC. 2. Section 46603 of the Education Code is amended to read:

46603. (a) For a period not to exceed two school months, the governing board of a school district may provisionally admit to the schools of the district a pupil who resides in another district, pending a decision of the two boards, or by the county board of education upon appeal, regarding the interdistrict attendance.

~~Regardless~~

(b) *Regardless* of whether the decision on interdistrict attendance is allowed, the provisional attendance may be counted by the district of attendance for revenue limit and state apportionment purposes. *After two school months have passed, if no decision has been made by the two governing boards or the county board of education under subdivision (a), the school district of residence shall receive the revenue limit and state apportionment funding attributable to that pupil.*

SEC. 3. Section 48204 of the Education Code, as amended by Section 1 of Chapter 33 of the Statutes of 2007, is amended to read:

1 48204. (a) Notwithstanding Section 48200, a pupil complies
2 with the residency requirements for school attendance in a school
3 district, if he or she is any of the following:

4 (1) (A) A pupil placed within the boundaries of that school
5 district in a regularly established licensed children's institution,
6 or a licensed foster home, or a family home pursuant to a
7 commitment or placement under Chapter 2 (commencing with
8 Section 200) of Part 1 of Division 2 of the Welfare and Institutions
9 Code.

10 (B) An agency placing a pupil in a home or institution described
11 in subparagraph (A) shall provide evidence to the school that the
12 placement or commitment is pursuant to law.

13 (2) A pupil for whom interdistrict attendance has been approved
14 pursuant to Chapter 5 (commencing with Section 46600) of Part
15 26.

16 (3) A pupil whose residence is located within the boundaries of
17 that school district and whose parent or legal guardian is relieved
18 of responsibility, control, and authority through emancipation.

19 (4) A pupil who lives in the home of a caregiving adult that is
20 located within the boundaries of that school district. Execution of
21 an affidavit under penalty of perjury pursuant to Part 1.5
22 (commencing with Section 6550) of Division 11 of the Family
23 Code by the caregiving adult is a sufficient basis for a
24 determination that the pupil lives in the home of the caregiver,
25 unless the school district determines from actual facts that the pupil
26 is not living in the home of the caregiver.

27 (5) A pupil residing in a state hospital located within the
28 boundaries of that school district.

29 (b) A school district may deem a pupil to have complied with
30 the residency requirements for school attendance in the district if
31 at least one parent or ~~the~~ legal guardian of the pupil is physically
32 employed within the boundaries of that district *during a majority*
33 *of the time that the pupil is scheduled to be in school.*

34 (1) This subdivision does not require the school district within
35 which at least one parent or ~~the~~ legal guardian of a pupil is
36 employed to admit the pupil to its schools. A school district shall
37 not, however, refuse to admit a pupil under this subdivision on the
38 basis, except as expressly provided in this subdivision, of race,
39 ethnicity, sex, parental income, scholastic achievement, or any
40 other arbitrary consideration.

1 (2) The school district in which the residency of either the
2 parents or the legal guardian of the pupil is established, or the
3 school district to which the pupil is to be transferred under this
4 subdivision, may prohibit the transfer of the pupil under this
5 subdivision if the governing board of the district determines that
6 the transfer would negatively impact the court-ordered or voluntary
7 desegregation plan of the district.

8 (3) The school district to which the pupil is to be transferred
9 under this subdivision may prohibit the transfer of the pupil if the
10 district determines that the additional cost of educating the pupil
11 would exceed the amount of additional state aid received as a result
12 of the transfer.

13 (4) The governing board of a school district that prohibits the
14 transfer of a pupil pursuant to paragraph (1), (2), or (3) is
15 encouraged to identify, and communicate in writing to the parents
16 or the legal guardian of the pupil, the specific reasons for that
17 determination and is encouraged to ensure that the determination,
18 and the specific reasons therefor, are accurately recorded in the
19 minutes of the board meeting in which the determination was made.

20 (5) The average daily attendance for pupils admitted pursuant
21 to this subdivision is calculated pursuant to Section 46607.

22 (6) Unless approved by the sending school district, this
23 subdivision does not authorize a net transfer of pupils out of a
24 school district, calculated as the difference between the number
25 of pupils exiting the district and the number of pupils entering the
26 district, in a fiscal year in excess of the following amounts:

27 (A) For a school district with an average daily attendance for
28 that fiscal year of less than 501, 5 percent of the average daily
29 attendance of the district.

30 (B) For a school district with an average daily attendance for
31 that fiscal year of 501 or more, but less than 2,501, 3 percent of
32 the average daily attendance of the district or 25 pupils, whichever
33 amount is greater.

34 (C) For a school district with an average daily attendance of
35 2,501 or more, 1 percent of the average daily attendance of the
36 district or 75 pupils, whichever amount is greater.

37 (7) Once a pupil is deemed to have complied with the residency
38 requirements for school attendance pursuant to this subdivision
39 and is enrolled in a school in a school district the boundaries of
40 which include the location where at least one parent or the legal

1 guardian of a pupil is physically employed, the pupil does not have
2 to reapply in the next school year to attend a school within that
3 district and the district governing board shall allow the pupil to
4 attend school through grade 12 in that district if the parent or legal
5 guardian so chooses and if at least one parent or the legal guardian
6 of the pupil continues to be physically employed by an employer
7 situated within the attendance boundaries of the district, subject
8 to paragraphs (1) to (6), inclusive.

9 (c) This section shall become inoperative on July 1, ~~2012~~ 2013,
10 and as of January 1, ~~2013~~ 2014, is repealed, unless a later enacted
11 statute, that becomes operative on or before January 1, ~~2013~~ 2014,
12 deletes or extends the dates on which it becomes inoperative and
13 is repealed.

14 SEC. 4. Section 48204 of the Education Code, as amended by
15 Section 2 of Chapter 33 of the Statutes of 2007, is amended to
16 read:

17 48204. Notwithstanding Section 48200, a pupil complies with
18 the residency requirements for school attendance in a school
19 district, if he or she is:

20 (a) (1) A pupil placed within the boundaries of that school
21 district in a regularly established licensed children's institution,
22 or a licensed foster home, or a family home pursuant to a
23 commitment or placement under Chapter 2 (commencing with
24 Section 200) of Part 1 of Division 2 of the Welfare and Institutions
25 Code.

26 (2) An agency placing a pupil in the home or institution
27 described in paragraph (1) shall provide evidence to the school
28 that the placement or commitment is pursuant to law.

29 (b) A pupil for whom interdistrict attendance has been approved
30 pursuant to Chapter 5 (commencing with Section 46600) of Part
31 26.

32 (c) A pupil whose residence is located within the boundaries of
33 that school district and whose parent or legal guardian is relieved
34 of responsibility, control, and authority through emancipation.

35 (d) A pupil who lives in the home of a caregiving adult that is
36 located within the boundaries of that school district. Execution of
37 an affidavit under penalty of perjury pursuant to Part 1.5
38 (commencing with Section 6550) of Division 11 of the Family
39 Code by the caregiving adult is a sufficient basis for a
40 determination that the pupil lives in the home of the caregiver,

1 unless the school district determines from actual facts that the pupil
2 is not living in the home of the caregiver.

3 (e) A pupil residing in a state hospital located within the
4 boundaries of that school district.

5 (f) This section shall become operative on July 1, ~~2012~~ 2013.

6 SEC. 5. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.

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